Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   MNDL-S, MNDCL-S, MNRL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 1:45 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed she understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than $5 000."

The landlord affirmed the tenant moved out and did not provide a forwarding address.

The landlord emailed the notice of hearing to the tenant. The landlord assumed the tenant blocked her email address. The tenant did not confirm receipt of the notice of hearing and did not provide an email address for service of documents.

Section 89(1) of the Act states:

> An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
> (a)by leaving a copy with the person;
> (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
> (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
> (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
> (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
> (f)by any other means of service provided for in the regulations.

Regulation 43(2) states:

> For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Based on the landlord's testimony, I find the tenant did not provide an email address for service and cannot be served by email.

Thus, I find the tenant (respondent) was not served in accordance with Regulation 43(2) or section 89 of the Act. The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the $100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for a monetary order and for an authorization to retain the security deposit with leave to reapply

I dismiss the landlord's application for an authorization to recover the filing fee without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 03, 2021

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Residential Tenancy Branch